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In re Application of: BELLY, Robert T., et al.	:	
U.S. Application No.: 10/019,514	:	
PCT No.: PCT/US00/11651	:	DECISION REGARDING
International Filing Date: 01 May 2000	:	PETITION TO REVIVE UNDER
Priority Date: 04 May 1999	:	37 CFR 1.137(a)
Attorney's Docket No.: CDS 219	:	
For: RAPID AND EFFICIENT CAPTURE OF	:	
DNA FROM SAMPLE WITHOUT USING	:	
CELL LYSING REAGENT	:	

This decision is issued in response to applicants' "Petition For Revival Of An Application Abandoned Unavoidably Under 37 CFR 1.137(a)" filed on 21 January 2003. Applicants have paid the required petition fee.

### **BACKGROUND**

This national stage application became abandoned at midnight on 10 June 2002 based on applicants' failure to file a response to Notification Of Missing Requirements mailed 10 April 2002.

On 21 January 2003, applicants filed the "Petition For Revival Of An Application Abandoned Unavoidably Under 37 CFR 1.137(a)," with accompanying materials. The petition asserts that a docketing error occurred with respect to the Notification Of Missing Requirements, resulting in the lack of a timely response. Applicants argue that the abandonment was therefore "unavoidable" under 37 CFR 1.137(a).

### **DISCUSSION**

Under 37 CFR 1.137(a), a petition requesting that the application be revived on the grounds of unavoidable delay must be filed promptly after applicant becomes aware of the abandonment, and such petition must be accompanied (1) by an adequate verified showing of the cause of unavoidable delay, (2) by a proper response, unless already filed, (3) by the petition fee required by law, and (4) by a terminal disclaimer (if necessary). Applicants have satisfied items (2) and (3) above, and item (4) is not applicable. However, as discussed below, applicants have failed to satisfy item (1).

One of the requirements for a grantable petition under 37 CFR 1.137(a) is an adequate showing that the entire delay in filing the required reply was unavoidable. Section 711.03(c)(2), of the Manual of Patent Examining Procedure ("MPEP") states the following:

Decisions on reviving abandoned applications on the basis of 'unavoidable' delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. ...

Here, applicants explain that, although the Notification Of Missing Requirements was timely received by counsel, a docketing error resulted in the failure to file a timely response. This is insufficient to satisfy the stringent standards applied to "unavoidable" abandonments.

Regarding item (2), the proper response required was submission of a declaration in compliance with 37 CFR 1.497, payment of the surcharge for delayed filing of the declaration, payment of additional fees based on the number of claims presented, and submission of sequence listing information. The present submission includes payment of the required surcharge and fees, and it was accompanied by a computer disc which applicants state contains the required sequence listing and an executed declaration. Accordingly, item (2) is satisfied.

The present petition included the required entity petition fee. Accordingly, item (3) is satisfied, and, as noted above, item (4) does not apply here.

Because applicant has failed to satisfy all the requirements for a grantable petition under 37 CFR 1.137(a), the petition cannot be granted at this time.

### CONCLUSION

The petition to revive the application with respect to the United States under 37 CFR 1.137(a) is **DISMISSED** without prejudice. The application remains **ABANDONED** with respect to the United States.

If applicants seek reconsideration of the decision, a renewed petition must be submitted within **TWO (2) MONTHS** from the mail date of this decision.

It is suggested that, in the alternative to a renewed petition, applicants consider filing a petition to revive an unintentionally abandoned application under 37 CFR 1.137(b), as such a petition would be more appropriate under the factual situation described here.

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

A handwritten signature in black ink, appearing to read 'RM Ross'.

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